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DRAFT MODEL LAW ON LEGAL ASPECTS OF ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS OF COMMUNICATION

Compilation of comments by Governments and international organizations

Addendum

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A. States

CHINA

[Original: English]

China appreciates the efforts of UNCITRAL of drafting the above-captioned Model Law and deems that the Model Law, which will harmonize national legislation in this relation, will serve to remove the legal hurdles to the developments of EDI and related means of communication in international trade.

Generally, China considers that the present text of Model Law reflects the discussions made during the sessions of UNCITRAL EDI Working Group and meets the growing need in the area of electronic commerce, particularly, the legal certainty. Furthermore, China would like to make a few comments on the Model Law.

1. Title of the Model Law

Basically, the present title defines the technological scope governed by this Model Law while it may still contain some uncertainty and ambiguity, which would result in difficulties when enacting States formulate titles for their national laws modelled on the Model Law. It was suggested in a previous Working Group session that "Model Law on Electronic Commerce" may be a more desirable substitute, this suggestion is worth reconsideration.

2. Article 2. Definitions

As for the notion of EDI, due regard shall be had to the work of other international organizations (for example, UN/ECE/WP.4) in this respect, namely, the technical definition of EDI shall be in conformity with internationally-accepted notion in order to pave a sound technological groundwork for the Model Law.

3. Article 8. Admissibility and evidential value of data messages

China has some difficulties with the term "best evidence" in (1)(b) as this is not a well acceptable notion within the context of Chinese legal terminology.

4. China has no specific comments on the rest of the Model Law.

DENMARK

[Original: English]

Denmark welcomes the completion of the draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication by the UNCITRAL Working Group on EDI in October, 1994, and of the draft guide for the enactment of the Model Law that was completed earlier this year. For the consideration of UNCITRAL at its next session, Denmark proposes the following changes to the Model Law:

1. Re Article 2: Definitions

This article defines "Data message" as "information generated, stored or communicated by electronic, optical or analogous means ...". The use of the words "analogous means" may give many readers the understanding that "analogous" refers to "analog" (as opposed to "digital"). Thereby, the definition will refer to any set of data, including spoken words. Since it is quite important for the delimitation of the Model Law, Denmark suggests that the provision is modified as follows:

"Data message" means digital information generated, stored or communicated by electronic, optical or similar means, including ... (etc.)".

This definition points to digitalization as the essential characteristic of computerized information - the characteristic that makes information programmable and reproducible, among other things.

Alternatively, Denmark suggests that a clear explanation as to the meaning of "analogous" be included in the Guide to the Model Law.

2. Re Article 14: Time and place of dispatch and receipt of data messages

Article 14, subsection (2) (b) assumes that anyone is under obligation to have received data messages at his "information system". As it has already been said by various delegates during discussions of the Working Group, this consequence might have far reaching consequences for communicating parties with several information systems (for example several e-mail addresses).

Denmark suggests that this provision be deleted from the Model Law. In consequence of this, the communicating party will have to approach the other party by other means.

Alternatively, Denmark suggests that subsection (2) (b) only applies to information systems that the addressee has already applied in his communication with the originator. According to this proposal, the provision would read:

"(2) (b) If the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee by which the addressee has already communicated with the originator".

OMAN

[Original: English]

The Government of the Sultanate of Oman shall not be able to provide, at this time, its comments on the draft Model Law on Legal Aspects of Electronic Data Interchange.

B. Intergovernmental international organizations

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

[Original: English]

The UNCTAD Secretariat has no comments on the draft Model Law.